

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

IN RE: POLYURETHANE FOAM ANTITRUST  
LITIGATION

No. 10-MD-2196 (JZ)

THIS DOCUMENT RELATES TO:

Hon. Jack Zouhary

ALL ACTIONS, including:

Henson Sleep Relief, Inc v. Hickory Springs  
Manufacturing Co., et al.,  
1:11-pf-10009 JZ and Spring Air International LLC v.  
Hickory Springs Manufacturing Co., et al.,  
1:11-pf-10007 JZ

**PLAINTIFFS' JOINT MOTION FOR ENTRY OF  
CLERK'S DEFAULT AGAINST DEFENDANT SCOTTDEL, INC.**

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Indirect Purchaser Plaintiffs, Direct Purchaser (Class Action) Plaintiffs, and Direct Action (Non-Class) Plaintiffs, Spring Air International LLC (11-pf-10007 JZ and Henson Sleep Relief, Inc., (11-pf-10009 JZ), (collectively, “Plaintiffs”) request the Clerk of the Court to enter default against Defendant Scottdel, Inc. (“Scottdel”) for failure to serve any responsive pleading or paper on the undersigned, to file any such paper or pleading or to plead or otherwise defend against this action as provided by the Federal Rules of Civil Procedure, and state as follows:

1. On or about August 13, 2010, direct purchaser Piazza's Carpet & Tile Shop, Inc., filed a class action Complaint in the United States District Court for the Western District of North Carolina against, *inter alia*, Scottdel, in Civil Action No. 5:10-cv-111. That action and several other direct purchaser class actions were later consolidated by the Judicial Panel on Multidistrict Litigation and transferred to this Court for consolidated proceedings.

2. Direct Purchaser (Class Action) Plaintiffs are informed and believe, based on their review of the respective filed class actions, that Scottdel was first served on or about August 20, 2010, several times thereafter in connection with pre-MDL suits, and then again in this action via ECF.

3. On or about December 2, 2010, counsel from Roetzel & Andress, P.A. registered for ECF notifications on behalf of Scottdel. Based on recent ECF notices, Roetzel & Andress, P.A. attorneys still receive notifications of filings in these consolidated proceedings to this day.

4. On or about January 24, 2011, the Indirect Purchaser Plaintiffs filed a Complaint in Civil Action No. 1:11-pf-10002. This action was later transferred to the above captioned MDL.

5. On January 20, 2011, the Court entered an order [Dkt. #17] requiring the Direct Purchaser (Class Action) Plaintiffs to file a Consolidated Amended Complaint (the "DCAC") by February 28, 2011. The same order required all defendants to answer or otherwise respond to the DCAC by April 15, 2011.

6. On February 24, 2011, the Court entered an order [Dkt. #45] requiring the Indirect Purchaser Plaintiffs to file a Consolidated Amended Complaint (the "ICAC") by March 21, 2011. The same order required all defendants to answer or otherwise respond to the ICAC by May 6, 2011.

7. Thereafter, on February 28, 2011, the Direct Purchaser (Class Action) Plaintiffs filed the DCAC [Dkt. #46] and, on March 21, 2011, the Indirect Purchaser Plaintiffs filed the ICAC [Dkt. #52] in accordance with the Court's January 20, 2011 and February 24, 2011 Orders.

8. Scottdel neither filed nor served any responsive pleading or paper within the time required by the Court's January 20, 2011 or February 24, 2011 Orders, nor has it sought or

received any extension of time within which to file or serve any responsive pleadings. Scottdel has neither filed nor served responsive pleadings in the *Henson* and *Spring Air* actions. Furthermore, it has not filed or served the required corporate disclosures or complied with the disclosures under Rule 26.

9. On April 15 and May 6, 2011 several defendants filed joint, “common issues” motions to respectively dismiss the DCAC and ICAC [Dkt. #90, 119]. Scottdel did not file a motion to dismiss of its own, affix its name to the “common issues” motions, or file any other papers indicating that it wished to join the motions to dismiss.

10. Given that it has not responded to the ICAC or DCAC in any way, a default should therefore be entered against Scottdel, Inc. pursuant to Fed. R. Civ. P. 55(a).

WHEREFORE, Plaintiffs respectfully request that the Clerk of the Court enter a default against Defendant Scottdel, Inc. for its failure to serve any responsive pleading or paper in this action.

August 16, 2011

Respectfully Submitted,

/s/ Marvin A. Miller

Marvin A. Miller

Lori A. Fanning

Matthew E. Van Tine

**Miller Law LLC**

115 S. LaSalle Street, Suite 2910

Chicago, IL 60603

Tele: (312) 332-3400

Fax: (312) 676-2676

Email: [mmiller@millerlawllc.com](mailto:mmiller@millerlawllc.com)

[lfanning@millerlawllc.com](mailto:lfanning@millerlawllc.com)

[mvantine@millerlawllc.com](mailto:mvantine@millerlawllc.com)

***Interim Lead Counsel for Indirect Purchasers***

Richard M. Kerger (0015864)  
Kimberly Conklin (0074726)  
**KERGER & HARTMAN, LLC**  
33 S. Michigan Street, Suite 100  
Toledo, OH 43604  
Telephone: (419) 255-5990  
Fax: (419) 255-5997  
Email: [rkerger@kergerlaw.com](mailto:rkerger@kergerlaw.com)  
[kconklin@kergerlaw.com](mailto:kconklin@kergerlaw.com)

*Executive Committee for Indirect Purchasers*

/s/ William A. Isaacson  
William A. Isaacson  
BOIES, SCHILLER & FLEXNER LLP  
5301 Wisconsin Avenue, NW  
Washington, DC 20015  
Phone: 202-237-5607  
Fax: 202-237-6131  
[wisaacson@bsflp.com](mailto:wisaacson@bsflp.com)

/s/ Stephen R. Neuwirth  
Stephen R. Neuwirth  
QUINN EMANUEL URQUHART  
& SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
Phone: 212-849-7165  
Fax: 212-849-7100  
[stephenneuwirth@quinnemanuel.com](mailto:stephenneuwirth@quinnemanuel.com)

*Direct Purchaser Plaintiffs' Interim Co-Lead Counsel*

/s/ William J. Blechman  
William J. Blechman  
Douglas H. Patton  
**KENNY NACHWALTER, P.A.**  
201 South Biscayne Boulevard  
Suite 1100  
Miami, Florida 33131-4327  
Phone: 305-373-1000  
Fax: 305-372-1861  
Email: [wblechman@kennynachwalter.com](mailto:wblechman@kennynachwalter.com)

*Liaison Counsel for Direct Action (Non-Class) Plaintiffs*

**CERTIFICATE OF SERVICE**

I, Marvin A. Miller, certify that on August 16, 2011, I served the foregoing document in accordance with Paragraph 9 of the Initial Case Management Order entered January 20, 2011.

s/Marvin A. Miller